

NO. 49927-4-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

In re Dependency of J.E.D.A., a Minor

STATE OF WASHINGTON, DSHS,

Respondent,

v.

HELERINA MOKIS,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR CLARK COUNTY

The Honorable Daniel Stahnke, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

THE STRUCTURAL ERROR DOCTRINE SHOULD APPLY IN THE CONTEXT OF PARENTAL RIGHTS CASES AND BRIGHTLINE RULES THAT PREVENT THIS ARE INCORRECT AND HARMFUL.

In her opening brief, appellant Helerina Mokis asserts that the trial court's failure to comply with the statutory requirements for insuring non-English speaking parties due process through the assistance of a competent interpreter constitutes structural error. Brief of Appellant (BOA) at 6-8. In response, the State claims the structural error doctrine does not apply in any civil proceedings, citing the plurality opinion in In re D.F.F., 172 Wn.2d 37, 256 P.3d 357 (2011). Brief of Respondent (BOR) at 13.

While the plurality opinion in D.F.F. does indeed say that the doctrine only applies in criminal cases, appellant respectfully suggests that D.F.F. is incorrect and harmful to the extent it adopts a bright-line rule suggesting the structural error doctrine never applies in parental rights cases. See, BOA at 6-8 (explaining that the doctrine does properly applies in parental rights cases). Supreme Court justices have recognized that the intersection of interpreter issues and the structural error doctrine is an area of the law that is still evolving as interpreter issues become more

significant in society. In re Khan, 184 Wn.2d 679, 691, 363 P.3d 577, 582 (2015) (Justice Yu concurring). However, appellant understands this Court is not in a position to overrule binding Supreme Court precedent even if it is incorrect and harmful. See, e.g., Fergen v. Sestero, 174 Wn. App. 393, 398, 298 P.3d 782, 785 (2013), aff'd, 182 Wn. 2d 794, 346 P.3d 708 (2015). Hence, the issue is raised here with the understanding that definitive relief may only come at the next level.

To the extent this Court finds itself bound by D.F.F.'s bright-line rule, appellant respectfully urges this Court accept the State's concession and send the case back to the trial court for a reference hearing under RAP 9.11 so the trial court may determine (1) whether the interpreter met statutory requirements for competency and, if not, (2) whether Mokis was in fact prejudiced.

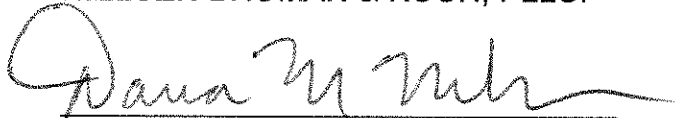
B. CONCLUSION

For reasons stated herein and in appellant's opening brief, appellant requests the trial court ruling be reversed or, alternatively, this Court order a reference hearing.

DATED this 21st day of June, 2017.

Respectfully submitted,

NIELSEN BROMAN & KOCH, PLLC.

A handwritten signature in dark ink, appearing to read 'Dana M. Nelson', is written over a horizontal line.

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